



AGENDA

IDAHO WATER RESOURCE BOARD

Finance Committee Meeting No. 1-24

Thursday, January 11, 2024

3:00 p.m. (MT) / 2:00 p.m. (PT)

Water Center

Conference Room 648A

322 E. Front St.

BOISE

Brad Little

Governor

Jeff Raybould

Chairman

St. Anthony

At Large

Jo Ann Cole-Hansen

Vice Chair

Lewiston

At Large

Dean Stevenson

Secretary

Paul

District 3

Dale Van Stone

Hope

District 1

Albert Barker

Boise

District 2

Brian Olmstead

Twin Falls

At Large

Marcus Gibbs

Grace

District 4

Patrick McMahon

Sun Valley

At Large

Livestream available at <https://www.youtube.com/@iwrp>

1. Introductions and Attendance
2. Lost Valley Loan Request*
3. Aging Infrastructure Grants Round 4 Awards*
4. Regional Water Sustainability Projects List Terms & Conditions Approval*
 - a. City of Gooding*
 - b. American Falls*
5. Requests to Be Added to The Regional Water Sustainability Projects List*
6. Lewiston Orchards Exchange Project*
7. Legislative Audit
8. Other Items
9. Adjourn

Committee Members: Chair Jo Ann Cole-Hansen, Jeff Raybould, Marc Gibbs, Dale Van Stone, and Dean Stevenson.

* Action Item: A vote regarding this item may be made at this meeting. Identifying an item as an action item on the agenda does not require a vote to be taken on the item.

Americans with Disabilities

The meeting will be held in person and online. If you require special accommodations to attend, participate in, or understand the meeting, please make advance arrangements by contacting Department staff by email jennifer.strange@idwr.idaho.gov or by phone at (208) 287-4800.

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Website: idwr.idaho.gov/IWRB/

MEMO



To: Idaho Water Resource Board
From: Justin Ferguson
Date: January 11, 2024
Subject: Lost Valley Reservoir Company – Loan Application Review

REQUESTED ACTION: Consider Return of Loan application(s) due to insufficient information regarding repayment capabilities and security requirements.

1.0 SUMMARY

- Lost Valley Reservoir Company's Pre-Construction & EIS project (LVRC) was selected as one of the Idaho Water Resource Board's (IWRB) Regional Sustainability Projects
 - The criteria for consideration required LVRC to provide matching funds for LVRC's needed Environmental Assessment.
 - As of the date of this memorandum, the Project cost was estimated at \$1,120,000 and was to be a 50/50 cost share between the IWRB and LVRC
- In response to the proposed terms and conditions for the Regional Sustainability contract, LVRC applied for a loan to secure funding for the remaining, \$360,000 portion of its cost share should shareholder assessments prove insufficient.
 - To date, Staff have received two applications from LVRC:
 - A construction loan application, dated 9/1/2022 in the amount of \$9,138,000
 - A Pre-Construction and EIS loan application, dated 12/12/2023, in the amount of \$200,000
 - Based on the review of both the Environmental Assessment and construction applications, LVRC would not be able to cover the cost of the annual loan payments for either proposal without additional income. This is inconsistent with requirements set forth in I.C. § 42-1756(2.e).
 - Adequate security as defined in I.C. § 42-1756(5 & 7) has not been provided for either the Dam Raise or the Environmental Assessment applications. I.C. § 42-1756(5 & 7)
 - No loans can be made from the Revolving Development account for feasibility studies. I.C. § 42-1754(b)
 - If the applicant is able to address the concerns above, the IWRB may consider whether a loan can be made from the Water Management Account.
- Staff recommends returning both the Dam Raise and Environmental Assessment loan applications for Lost Valley Reservoir Company, allowing the Company time to refine its approach to funding both the Environmental Assessment and overall construction costs.
- Once LVRC has addressed the deficiencies discussed in more detail below, a new application can be submitted for review and recommendation.

2.0 PROPOSED PROJECT

The Lost Valley Reservoir project is a proposed raise of the existing earthen dam to increase surface water storage capacity from 10,000 AF to a total of 30,000 AF. As new areas are to be inundated, an environmental assessment is required, specifically regarding the Endangered Species Act (ESA) listed Northern Idaho Ground Squirrel.

To date, the IWRB has helped fund the installation of automation equipment, flow control and monitoring equipment, and a 2018 study on the Northern Idaho Ground Squirrel.

The \$560,000 awarded under the Regional Sustainability Priority list is for pre-construction work, including an EIS which is necessary to understand if raising the existing dam is a viable storage option.

3.0 LOAN APPLICATION ASSESSMENTS

Financial Assessment

Staff reviewed LVRC's initial application requesting \$9,183,000 for construction costs and the most recent application for \$360,000 to provide LVRC's cost share for the Environmental Assessment. In both instances similar deficiencies were identified in the proposals: insufficient collateral to secure the loan and insufficient income to make the proposed loan payments.

Based on the income statements provided in both applications, LVRC had an estimated yearly income of \$13,500. The annual payment for the construction loan was approximately \$749,100 while the most recent application for the environmental study was approximately \$19,000 (at an 8.5% interest rate and a 20-year term). The smallest loan payment would be significantly over LVRC's reported annual income / operating cost.

Idaho Code § 42-1756(e) states the Board may make loans to applicants where *"...there is reasonable assurance that the borrower can repay the loan"*. Based on the financial statements provided, Staff do not believe LVRC could repay either loan without substantial additional income.

Security Assessment

Idaho Code §§ 42-1756(5) and (7) require the IWRB to have sufficient security for a loan.

"The board shall have security for a loan from the revolving account that is appropriate to the loan and the borrower. As security for the loan, the board may hold a lien against real property, including water rights, from the borrower and may file a statement of the loan, its amount, terms, and a description of the security with the county recorder".

Idaho Code § 42-1756(5)

"The state shall have a lien on any or all projects the board improves or renovates with money from the revolving account, and such lien shall be valid and continue in effect until such funds, together with interest thereon, have been paid in full and the lien discharged"

Idaho Code § 42-1756(7)

The initial application proposes using income from the sale of Class D shares as security for the construction loan. Because the shares are still being sold by LVRC and the water is unavailable until construction is complete, it is not possible to place a lien pursuant to 42-1756(5) and 42-1756(7).

LRVC was asked to provide sufficient security and had suggested the use of water right application 67-7938 in its most recent application. While the IWRB is statutorily able to accept water rights as security, this is still an application and has not yet been issued as a permit by the Department. Per a review of the water right backfile, it appears the application was protested in 1993 with no protest resolution on record.

Because this is still an application, and not a perfected water right or even a permit, the Board is statutorily unable to accept the application as security for the loan.

It is of note that LVRC has not provided the existing dam or water rights as security for either application. Because the entity is not an irrigation district its is not prevented from using the dam or water rights as security. However, there appears to be a hesitation in offering existing assets for the expansion. Staff were not able to find existing liens on either the water rights or dam structure that would prevent their use or that would put the IWRB in a second lien holder status.

Recently the IWRB has contemplated a loan for an applicant in a similar situation, the Raft River Recharge Group. In this instance the entity did not wish to use personal property to secure the loan and instead formed an irrigation district with assessment authority. Based on the similarities in the applications, Staff believe this option could be sufficient for LVRC to secure its loan should it not wish to provide property.

Project Assessment

Provided LVRC is able to resolve the funding and security concerns, there do not appear to be any concerns with the project as it pertains to the Idaho Water Plan. Increasing the storage capacity within the reservoir is a net benefit to the entire state, provided a mitigation plan can be developed regarding the North Idaho Ground Squirrel, if necessary.

The project proposal is in line with the State of Idaho Water Plan, at minimum to explore the cost of additional storage per acre foot and understand the project impacts to an ESA listed species.

It is notable that Idaho Code § 42-1754(b): *“no loans shall be made to finance feasibility studies except as a part of overall project costs”*. A study was conducted by A & B Engineering in 1993 to determine the enlargement feasibility including an environmental assessment. As part of that 1993 review, it was recognized that there were additional environmental issues to meet USFS NEPA compliance that would need to be addressed and included in the final report.

Because LVRC’s most recent application proposes to fund the additional Environmental Assessment recommended in the 1993 Feasibility Study and is not part of the overall project costs for the Dam raise, and because until the Environmental Assessment is completed the feasibility of the project remains in question, the loan would conflict with the Board’s obligations under Idaho Code § 42-1754(b).

If LVRC submits a new application addressing the concerns above, a loan could be made from the Water Management Account.

4.0 CONCLUSION AND RECOMMENDATION

Based on a review of the applications provided by LVRC, the project is consistent with the State Water Plan and could provide a benefit to the people of Idaho, provided the storage can be developed at a cost per acre-foot favorable to the water users.

LVRC has not been able to provide information affirming it is able to repay the loan, per Idaho Code § 42-1756(2)(e) and has not provided adequate collateral to secure the loan pursuant to Idaho Code §§ 42-1756(5) and (7). Additionally, Idaho Code § 42-1754(b) does not allow approval of a loan from the Revolving Development Account for a study. Accordingly, , Staff does not recommend the loan for approval and suggests returning both applications to allow LVRC an opportunity to refine its approach to funding both the Environmental Assessment and Construction activities.

Memorandum



To: Idaho Water Resource Board
From: Neeley Miller, Planning & Projects Bureau
Date: January 8, 2024
Re: Aging Infrastructure Grant Scoring/Ranking – Round Four

Action: Aging Infrastructure Grant Funding Recommendation to IWRB

The application period for the IWRB's fourth round of aging infrastructure funding closed on December 1, 2023. The IWRB received 19 grant applications requesting approximately \$7.7 million in funding. The applications were evaluated, scored, and ranked according to the criteria adopted by IWRB.

Round One – awarded \$12.5M in September 2022
Round Two—awarded \$12.5M in January 2023
Round Three—awarded \$11,083,621 in November 2023
Round Four—awards to be announced at the January IWRB Meeting

Key Elements of the Criteria

The IWRB defines an aging water infrastructure project as any new project, or new phase of an improvement project intended to repair, maintain, replace, or improve existing infrastructure that supports irrigation water delivery, storage, drainage, treatment, and use of water for irrigation. Projects that are already completed or underway by the application deadline are not eligible for this funding opportunity. Additionally, for purposes of this grant program, the term 'aging water infrastructure' does not include municipal drinking or wastewater systems.

- Grant Award Limit is \$2,000,000
- IWRB grant portion cannot exceed 1/3rd (33%) of total project costs.
- No more than 50% of the total budget may be spent within a single IWRB district. This limit may be waived if there are no competing funding demands.

Attached to this memo is a summary of staff scoring and ranking of the applications.

Aging Infrastructure Applications for Round Four		
Project	Funds Requested	Total Project Costs
1 Black Canyon Irrigation District Measurement Modernization	100,000	463,397
2 Sunnyside Irrigation District - Canal Lining	2,000,000	6,971,002
3 Jefferson Irrigation Company - Conversion to Pipeline	581,488	2,528,210
4 Twin Falls Canal Company - Closer High Line Measurement	51,332	171,106
5 Mud Lake Water Users - Lateral lining & Pump Station Reconstruction	800,000	2,400,000
6 Jefferson Irrigation Company - Measurement Modernization	145,648	458,800
7 Last Chance Canal Company - Measurement Modernization	140,674	211,000
8 Farmers Land & Irrigation Company - Diversion Replacement	89,667	269,000
9 Mountain Home Irrigation District - Tunnel 13 & 15 repairs	394,403	1,195,161
10 Parks and Lewisville Irrigation Company - SCADA Phase II	83,852	254,098
11 Dalton Gardens Irrigation District - Rehab Irrigation Transmission Line/Pump House	1,369,165	4,107,500
12 FMID - Modernize Crosscut Canal Check Structure	26,680	80,850
13 AFRD2 - Radial Arm Gate Repair	40,000	135,051
14 Teton Irrigation - Conversion of Lateral to Pipeline	58,008	175,780
15 New Sweden Irrigation District - Martin Flume Relocation/Expansion	672,891	2,039,062
16 Billbrey Ditch Company - Canal Automation	40,173	121,735
17 Capital View Irrigation District - Delivery Pipe Modernization	59,550	198,500
18 Moore Canal Water Users' Association - Conversion of Lateral to Pipeline	1,024,819	3,202,559
19 Squaw Creek Ditch Company - Canal Modernization Study	33,000	100,000
Total Funds Requested	7,711,350	25,082,811

Grant Budget is \$12.5 million for round four

Score	District	Award	Dist	Total Awarded	Percent Of Total
92.00	2	100,000	1	1,369,165	11.0%
89.00	4	2,000,000	2	594,126	4.8%
86.00	4	581,488	3	1,076,151	8.6%
85.00	3	51,332	4	4,638,908	37.1%
81.00	4	800,000	Total	7,678,350	61.4%
80.00	4	145,648	Budget	12,500,000	
79.00	4	89,667	Diff	-4,821,650	
79.00	2	394,403			
79.00	4	83,852			
77.00	1	1,369,165			
77.00	4	26,680			
75.00	4	40,000			
74.00	4	58,008			
72.00	4	672,891			
66.00	2	40,173			
63.00	2	59,550			
62.00	3	1,024,819			
23.00	2			study;not eligible for AIG	
		7,678,350			

MEMO



To: Idaho Water Resource Board
From: Neeley Miller, Planning & Projects Bureau
Date: January 8, 2024
Subject: Regional Water Sustainability Projects Terms & Conditions

REQUIRED ACTION: Recommend to the IWRB appropriate terms & conditions for selected Regional Water Sustainability Projects

Regional Water Sustainability Background

At the July 2023 IWRB meeting in Moscow the IWRB approved nine Regional Water Sustainability Projects statewide for a total of \$59.4 million. The regional projects were funded with federal American Rescue Plan Act (ARPA) monies and state surplus funds allocated to the Board's Water Management Account by Governor Little as part of his Leading Idaho initiative and the Idaho Legislature.

The funded projects are listed below:

1. **American Falls Spillway Rehabilitation - \$12.5 million; \$23.1M**
2. **Gooding Flood Control - \$4M; total cost \$40M**
3. City of Nampa Projects - \$3M; total cost \$180M*
4. New York Canal lining - \$25M; total cost \$50M
5. North Fremont Canal System - \$7.8M; total cost \$19M*
6. Raft River Pipeline - \$7M; total cost \$49M
7. Treasure Valley Water Supply study - \$155,500; total cost \$155,500*
8. Palouse Basin Aquifer - \$182,500; total cost \$365,000
9. Lost Valley Reservoir Enlargement - \$560,000; total cost \$1.1M

**Terms and Conditions approved in November 2023*

The IWRB directed staff to work with project sponsors to develop appropriate contract terms & conditions to be brought back to the IWRB for approval.

At the upcoming Finance Committee scheduled for this Thursday (1/11) staff will discuss the terms & conditions for those projects **bolded** above. Terms & conditions for the remaining projects will be presented to the Finance Committee at a future date.

American Falls Dam Spillway Rehab

American Falls Dam is owned and operated by the US Bureau of Reclamation (Reclamation). The Project Sponsors include American Falls Reservoir District (American Falls Reservoir District 2 and North Side Canal Company, collectively AFRD) and Idaho Power Company (IPC). The Project Sponsors represent the Spaceholders and Idaho Power Falling Water respectively and are each responsible for a percentage of the costs.

The Project involves a series of repairs to the American Falls Dam including Spillway Repair, Trunnion Pin Replacement, Guard Gate Frame Inspection/Repair, and Dam Intakes Replacement (Design, Acquisitions, and Construction). The Spillway Repair was completed from 2015-2023 and the other projects are scheduled to be completed between 2023 and 2032.

The IWRB approved the use of American Rescue Plan Act (ARPA) money to fund the Project Sponsors' portion of the estimated project costs totaling \$12,486,758.

After coordinating with the Project Sponsors and Reclamation, IDWR and Deputy Attorney General's staff propose the following contract framework:

- Execute a contract between IWRB, IPC, and AFRD.
- Funding shall be disbursed in installments with the final installment being paid before December 31, 2026.
- The first installment will cover, at a minimum, reimbursement for the amount already paid by the Project Sponsors for the completion of the Spillway Repair (\$3,442,264).
- IWRB will require invoices before it makes payments. Accompanying the first invoice, IWRB will need a breakdown of prior expenditures being reimbursed based on invoices from Reclamation to the Project Sponsors. All subsequent invoices should be accompanied by a breakdown of anticipated project costs based on Reclamation's estimates.
- Contract term will run the life of the Project, though all funding will be disbursed by December 31, 2026. Reporting requirements will continue through the life of the contract.
- Project Sponsors will provide annual reports detailing project expenditures and work completed.
- IWRB agrees to pay up to \$12,486,758 to be applied to completion of the Spillway Repair, Trunnion Pin Replacement, Guard Gate Frame Inspection/Repair, and Dam Intakes Replacement (Design, Acquisitions, and Construction).
- Project Sponsors will comply with the IWRB's standard contract terms and ARPA related terms.

A draft contract is attached for consideration.

Gooding Flood Control Project

The Little Wood River meanders through the City of Gooding in a constructed masonry channel known as the Gooding Canal. In the 1930s, the river was realigned, and the channel was constructed of grouted and un-grouted hand-placed lava rock over the native lava rock riverbed. Since 1941, the channel walls have deteriorated significantly, and the rate of deterioration increases as the project ages. While the City of Gooding has preserved the canal's functionality through ongoing maintenance, targeted repairs, and replacement of channel wall sections, the seventy-five-year-old channel has approached the end of its useful life. Additionally, many sections of the wall have failed, which presents increased risk in localized flooding and threat to adjacent public infrastructure and private property.

The City of Gooding has been working with the United States Army Corp of Engineers (USACE) for over twenty years to replace the Gooding Canal. Thanks to efforts by U.S. Congressman Mike Simpson, the project has finally secured the necessary \$40 million funding, which requires a 10% cost share (\$4 million).

The USACE will obtain all needed permits, approvals, and certifications. The City of Gooding will obtain any real estate interests needed to complete the project. Pre-construction activities will begin in February 2024. Construction is scheduled to begin in October 2025.

Invoice-Reimbursement Contract and Proposed Terms & Conditions

- This is an invoice-reimbursement not to exceed Contract where the Board has approved funding for the project. The sponsor shall pay the remainder of the project costs.
- Sponsor shall submit documentation demonstrating cost share has been secured (Project Partnership Agreement).
- 10% holdback on funds until Project Completion Form is submitted (\$400,000).
- When requested by the Board, provide a monthly progress report to the Contract Manager. The progress report shall include at a minimum:
 - Updated schedule to completion
 - Issues encountered in the reporting period
 - Final cost forecasts where applicable
 - Up to date project budget
- The Contractor shall provide with the final invoice a financial summary of the Project's costs with a detailed list of the type and amount of funds used to pay for the Project. The financial summary shall include the following:
 - Total final cost of the Project based on expenditures.
 - List all funding sources and the amount used on any aspect of the Project.

- If a Federal or State grant was awarded for any portion of the Project, include the amount awarded.

**REGIONAL WATER SUSTAINABILITY GRANT CONTRACT
AMERICAN FALLS SPILLWAY REHABILITATION**

CONTRACT NO.

This Contract is between the Idaho Water Resource Board (“Board”) and the “Contractors,” Idaho Power Company (“IPC”) and American Falls Reservoir District (“AFRD”).

RECITALS

- A. The Board was created under Article XV, Section 7 of the Constitution of the State of Idaho, with the power to construct and operate water projects. Pursuant to Idaho Code § 42-1734, the Board also has the power to finance water projects with available funds.
- B. The American Rescue Plan Act (ARPA), Pub. L. 117-2 subtitle M (2021), appropriated \$219,800,000,000 to the Coronavirus State and Local Fiscal Recovery Fund (SLFRF) for making payments to the States to mitigate the fiscal effects stemming from the public health emergency with response to the Coronavirus disease.
- C. The SLFRF funds may be used to, among other things, make necessary investments in water, sewer, or broadband infrastructure. Pub L. 117-2 sec. 602(c)(1)(D), 42 U.S.C. § 802(c)(D).
- D. Pursuant to 42 U.S.C. § 802(c)(4), SLFRF funds may be used to satisfy any non-federal matching requirement for an authorized Bureau of Reclamation (Reclamation) project.
- E. The Idaho Legislature in 2022 and 2023 passed legislation setting aside funds from the American Rescue Plan Act (ARPA) for the Board to use on projects including those that have been identified by the Board as high priority water sustainability projects.
- F. Contractors submitted an application for a grant to cover American Falls Reservoir Spaceholders’ contribution to repairs and replacement work being make on the American Falls Dam and associated spillway.
- G. The repairs are being constructed through the United States Bureau of Reclamation with monetary contributions made by Contractors and other similarly situated spaceholders. Construction began in 2019 and is expected to continue through 2032.
- H. Contractors met the Board’s grant criteria and were included on the Regional Water Sustainability Priority List. In July 2023, the Board approved funding for the Contractors’ Project.
- I. AFRD filed a joint application with IPC on behalf of all similarly situated spaceholders in American Falls Reservoir and will enter into individual memorandum of agreements with such spaceholders to implement this Contract.

The Parties Agree as Follows:

1. Project Coordination

- A. The Board's Contract Manager and representative for the administration of this Contract shall be Neeley Miller.
- B. The Contractors' Project Coordinators and representatives for the administration of this Contract shall be Kresta Davis for Idaho Power Company and Debbie Falconburg for American Falls Reservoir District. If a substitute coordinator and representative is appointed in the future for any individual party, the Parties agree to notify each other accordingly in writing.

2. Purpose

The purpose of this Contract is to provide non-federal match funding for repairs to American Falls Dam. The repairs include Spillway Repair, Trunnion Pin Replacement, Guard Gate Frame Inspection/Repair, and Dam Intakes Replacement (Design, Acquisitions, and Construction) ("Project"). A portion of the funds issued pursuant to this Contract will be used to reimburse Contractors for amounts previously paid to Reclamation. The remainder of funds will go to prepay Reclamation for the remaining construction activities.

3. Reporting

- A. Contractors shall provide a complete accounting of Contractors expenditures related to the Project as the Project progresses. In addition, Contractors shall provide the Board a summary of work completed on the Project during the period between reports. Both of these reports shall be referred to as "Required Reports."
- B. The Required Reports shall be submitted to the Board, through the Contract Manager and IDWR Payable (see full information in Section 4.B below) on the following schedule:
 - a. Contractors shall submit along with the first installment invoice the Required Reports covering the activities conducted and amounts to be reimbursed from the beginning of the Project up to the time of the first installment invoice.
 - b. Contractors shall submit the Required Reports along with each subsequent installment invoice covering the period between installment invoices.
 - c. After the final installment invoice in 2026, Contractors shall submit the Required Reports annually, no later than December 31 of each year, covering the prior year.
 - d. Contractors shall submit final Required Reports upon completion of the Project. The final Required Reports shall include a summary of the entire Project.

4. Compensation and Invoices

- A. This Contract is an installment contract for \$12,486,758, paid in four installments.
 - a. The first installment will reimburse Contractors for amounts already expended for the Spillway Repair an amount up to \$3,500,000. This installment may be invoiced on the Effective Date of this Contract.
 - b. The second installment in the amount of \$3,412,894 shall be invoiced between July 1, 2024, and December 31, 2024.
 - c. The third installment in the amount of \$2,418,700 shall be invoiced between July 1, 2025, and December 31, 2025
 - d. The fourth installment in the amount of 3,155,164 shall be invoiced between July 1, 2026, and November 30, 2026.
- B. The Contractors shall submit signed invoices for each installment on one of the Contractors' stationery to IDWR Payable, PO Box 83720, Boise, ID 83720-0098, or by email to IDWR.payable@idwr.idaho.gov. Each invoice shall include:
 - a. Contract number from Page 1 of the Contract,
 - b. Contractor's name, address, and telephone number,
 - c. Billing date,
 - d. Amount of the billing, and
 - e. The reporting required in Section 3.B above.
- C. The Board will review and upon approval, pay invoices in accordance with Idaho Code § 67-2302.
- D. The Contractors must hold funds received pursuant to this Contract in a non-interest bearing account.
- E. If the Contractors do not expend the full amount of funds received pursuant to this Contract upon completion of the Project, Contractors shall return any unused funds.

5. Term

This Contract shall take effect when all parties have signed it. The Effective Date of this Contract will be the date the Contract is signed by the last party to sign it. The Contract shall continue in effect until construction on the Project is complete, Contractors have submitted the final Required Reports, and any funds required to be returned to the Board pursuant to Section 4.E have been returned.

6. General Terms and Conditions

The Contractor shall abide by all applicable terms and conditions contained in the Standard Contract Provisions, attached as Attachment A and ARPA Grant Funding Contract Provisions, attached as Attachment B, both incorporated by this reference.

7. Counterparts

This Contract may be executed with electronic signatures and in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

The parties have executed this Contract on the date following their respective signatures.

State of Idaho

IDAHO WATER RESOURCE BOARD

322 E Front Street
PO Box 83720
Boise, ID 83720-0098

IDAHO POWER COMPANY

121 W. Idaho Street
Boise, Idaho 83720

Brian Patton
Executive Manager

Kresta Davis
Senior Manager of Water Policy

Date

Date

AMERICAN FALLS RESERVOIR DISTRICT

1035 N. Lincoln
Jerome, ID 83338

Dan Shewmaker
President

Date

Attachment A

STANDARD CONTRACT PROVISIONS IDAHO WATER RESOURCE BOARD

1. DEFINITIONS

- A. "Board" or "IWRB" shall mean the Idaho Water Resource Board, 322 East Front Street, PO Box 83720, Boise, Idaho 83720-0098, by and through its authorized representatives.
- B. "Contract" shall mean the contract document to which these standard provisions are attached, without respect to the name of the contract document.
- C. "Contract Manager" shall mean that person appointed by the Board to administer this Contract on behalf of the Board and includes, except as otherwise provided in this Contract, an authorized representative of the Contract Manager acting within the limits of his authority.
- D. "Project Coordinator" shall mean that person appointed by the Contractor to administer this Contract on behalf of the Contractor and includes, except as otherwise provided in this Contract, an authorized representative of the Project Coordinator acting within the limits of his authority.

2. PROJECT COORDINATION

- A. All communications given to the Contract Manager or Project Coordinator shall be as binding as if given to the party.
- B. The Board, or anyone authorized to act on its behalf, may change the Contract Manager at any time by written notice served on the Contractor.
- C. The Project Coordinator shall be the Contractor's representative for administration of this Contract and shall have full authority to act on behalf of the Contractor unless specified otherwise in the main body of the Contract. The Contractor may change its Project Coordinator by prior written notice served on the Board.

3. LIMITATION OF PROGRAM FUNDS

- A. The Contractor acknowledges that the Board cannot obligate funds prior to obtaining funding approval.
- B. The Board certifies that state or federal funds are presently available and authorized for expenditure to pay the portion of costs which will accrue during the current state or federal fiscal year or applicable grant period.
- C. All obligations of the Board, including the continuance of payments under this Contract, are contingent upon the availability and continued appropriation of funds. In the event funds become unavailable as determined by the Board, the Board may immediately terminate this Contract or amend it accordingly. In no event shall the Board be liable for any payments in excess of approved or appropriated funds available for this project.

4. TERMINATION FOR CONVENIENCE

- A. The Board may terminate for its convenience this Contract in whole or in part. In such event, the Board shall serve a written Notice of Termination for Convenience on the Contractor by deposit in the United States mail, as certified, return receipt requested with proper postage affixed. Notice of Termination for Convenience shall be deemed served upon its receipt.

- B. The Contractor shall not incur after the date of service of the Notice of Termination for Convenience any non-cancellable obligations, except as authorized in the written Notice of Termination for Convenience.
- C. If a termination for the convenience of the Board is effected, an equitable adjustment in the payments authorized in this Contract shall be made. Such adjustments shall provide for payment to the Contractor for services rendered prior to the effective date of termination of the Contract and for all non-cancellable obligations incurred prior to receipt of a Notice of Termination for Convenience.
- D. Within twenty days of receipt of a Notice of Termination for Convenience, the Contractor shall submit a summary detailing all completed work required by this Contract and deliver or otherwise make available to the Board all data, reports, estimates, summaries and such other information and materials as may have been accumulated by Contractor in performing this Contract, whether completed or in process.

5. TERMINATION FOR DEFAULT

- A. In addition to any termination of this Contract in accordance with Section 4, the Board may terminate this Contract in whole or in part because of the failure of the Contractor to fulfill its obligations, if Contractor fails to cure such default after notice and a period to cure. Upon receipt of Notice of Termination for Default, the Contractor shall immediately discontinue all services affected. Oral notice of termination by the Board is effective when given, but in such a case, the Board shall confirm with written Notice of Termination for Default by deposit in the United States mail as certified, return receipt requested. The effective date of termination for default if no oral notice is given shall be the date of receipt of Notice of Termination for Default.
- B. If a termination for default is effected, the Board has the right to withhold payment for services provided that relate to the Contractor's default.
- C. Within twenty days of receipt of a Notice of Termination for Default, the Contractor shall submit a summary detailing all completed work required by this Contract and deliver or otherwise make available to the Board all data, reports, estimates, summaries and such other information and materials as may have been accumulated by Contractor in performing this Contract, whether completed or in process.
- D. The rights and remedies of the Board provided in this Contract are in addition to any other rights and remedies provided by law or under this Contract.

6. INDEMNIFICATION

- A. Contractor shall indemnify, defend, and save harmless the Board, its officers, agents, employees, and volunteers from and against any and all liability, claims, damages, losses, expenses, actions, settlements, attorneys' fees, and suits whatsoever caused by, arising out of, or in connection with Contractor's acts or omissions under this Contract or Contractor's failure to comply with any state or federal statute, law, regulation, or rule.
- B. Upon receipt of the Board's tender of indemnity and defense, Contractor shall immediately take all reasonable actions necessary, including, but not limited to, providing a legal defense for the Board, to begin fulfilling its obligation to indemnify, defend, and save harmless the Board. Contractor's indemnification and defense liabilities described herein shall apply regardless of any

allegations that a claim or suit is attributable in whole or in part to any act or omission of the Board under this Contract. However, if it is determined by a final judgment that the Board's negligent act or omission is the sole proximate cause of a suit or claim, the Board shall not be entitled to indemnification from Contractor with respect to such suit or claim, and the Board, in its discretion, may reimburse Contractor for reasonable defense costs attributable to the defense provided by any Special Deputy Attorney General appointed pursuant to Section 6.C.

- C. Any legal defense provided by Contractor to the Board under this section must be free of any conflicts of interest, even if retention of separate legal counsel for the Board is necessary. Any attorney appointed to represent the Board must first qualify as and be appointed by the Attorney General of the State of Idaho as a Special Deputy Attorney General pursuant to Idaho Code §§ 67-1401(13) and 67-1409(1).

7. NO PERSONAL LIABILITY

In no event shall any official, officer, employee, or agent of the Board and the State of Idaho be personally liable for any representation, statement, covenant, warranty, or obligation contained in, or made in connection with, this Contract, express or implied.

8. WORKERS COMPENSATION INSURANCE

Unless the Contractor is exempt under the provisions of Idaho Code § 72-212, the Contractor warrants that it has purchased worker's compensation insurance for Contractor and all employees engaged in the performance of this Contract and shall provide the Board with a Certificate of Insurance to verify the same within 15 days of the execution of this Contract. The Contractor shall notify the Contract Manager within five days of any change in the status of its worker's compensation insurance.

9. INSURANCE

- A. Contractor shall obtain and maintain insurance at its own expense for the duration of the Contract with insurance companies properly licensed to do business in Idaho insurance in amounts not less than the following:
 - i. Commercial General Liability (CGL) with a limit of not less than \$1,000,000 each occurrence/aggregate if defense is outside the limit, and \$2,000,000 per occurrence/aggregate, if defense is inside the limit.
 - ii. Automobile Liability including owned, non-owned, leased, and hired liability with a limit of not less than \$1,000,000 each occurrence.
 - iii. Professional liability insurance covering any damages caused by an error, omission, or any negligent acts. Combined single limit per occurrence shall not be less than \$1,000,000 or the equivalent. Annual aggregate limit shall not be less than \$1,000,000.
- B. The Contractor shall provide certificates of insurance or certified endorsements for the insurance required. Contractor shall provide a copy of the carrier's notice of cancellation or material changes within two days of the Contractor receiving notice from the carrier. All insurance, except for Workers Compensation and Professional Liability/Errors and Omissions, shall name the Board and the State of Idaho as Additional Insured.

10. RELATIONSHIP OF THE PARTIES

- A. The parties intend to create by the terms of this Contract, an independent contractor relationship between the Board and the Contractor.
- B. The parties do not intend to create by the terms of this Contract the relationship of employer and employee. Contractor's status under this Contract shall be that of an independent contractor and not that of an agent or employee of the State. Contractor shall be responsible for paying all employment-related taxes and benefits, such as federal and state income tax withholding, social security contributions, worker's compensation, and unemployment insurance premiums, health and life insurance premiums, pension contributions, and similar items. Contractor shall indemnify the Board and the State and hold them harmless from all claims for taxes (including but not limited to social security taxes), penalties, attorneys' fees, and costs that may be made or assessed against the State arising out of Contractor's failure to pay such taxes, fees or contributions.

11. ASSIGNMENT OF BENEFITS AND DELEGATION OF DUTIES

- A. The Contractor shall not delegate any duties under this Contract or assign any benefits, including any moneys due or to become due hereunder, without the prior written consent of the Board.
- B. In the event a delegation of duties or an assignment of benefits is approved by the Board, the Contractor shall remain responsible and agrees to bind every such delegate or assignee to comply with the terms and conditions of this Contract.

12. PUBLIC RECORDS

Pursuant to Idaho Code Title 74, Chapter 1, information or documents received from the Contractor may be open to public inspection and copying unless exempt from disclosure. The Contractor shall clearly designate each portion as "exempt" on each page of such documents and shall indicate the basis for such exemption. The Board will not accept the marking of an entire document as exempt. In addition, the Board will not accept a legend or statement on one page that all, or substantially all, of the document is exempt from disclosure. The Contractor shall indemnify and defend the Board against all liability, claims, damages, losses, expenses, actions, attorneys' fees, and suits whatsoever for honoring such a designation or for the Contractor's failure to designate individual documents as exempt. The Contractor's failure to designate as exempt any portion of a document that is released by the Board shall constitute a complete waiver of any and all claims for damages caused by such release.

13. RIGHTS IN DATA

- A. All data, plans, drawings, specifications, reports, operating manuals, notes, and other written documents produced in the performance of this Contract or in contemplation thereof, are owned by and are for the exclusive use of the Board and are subject to the rights of the Board set forth in this section.
- B. The Board shall have the right to reproduce, publish, and use all such documents or any part, in any manner and for any purposes whatsoever and to authorize others to do so.
- C. The Board agrees to identify the Contractor or designate appropriate authorship on all materials reproduced and published that are a direct product of the work performed under this Contract.

14. RETENTION OF RECORDS AND ACCESS TO FACILITIES, PREMISES, AND RECORDS

- A. The Contractor shall establish and maintain project budget accounts and records for work and services required by this Contract in accordance with generally accepted accounting principles and practices. Records shall be retained by the Contractor throughout the term of this Contract and for a period of three years following final settlement.
- B. At all reasonable times during the term of this Contract and for a period of three years following final settlement, the Board, State of Idaho, and their authorized representatives shall have access at the Contractor's offices to its records related to the services performed under this Contract for the purposes of inspection, audit, and copying by the Board, State of Idaho, and their authorized representatives.

15. FORCE MAJEURE

- A. If a Force Majeure Event prevents a party from complying with any one or more obligations under this Contract, that inability to comply will not constitute breach if (1) that party uses reasonable efforts to perform those obligations, (2) that party's inability to perform those obligations is not due to its failure to (A) take reasonable measures to protect itself against events or circumstances of the same type as that Force Majeure Event or (B) develop and maintain a reasonable contingency plan to respond to events or circumstances of the same type as that Force Majeure Event, and (3) that party complies with its obligations under this section.
- B. "Force Majeure Event" means any event or circumstance, whether or not foreseeable, that was not caused by the claiming party and any consequences of that event or circumstance.
- C. If a Force Majeure Event occurs, the noncomplying party shall promptly notify the other party of that Force Majeure Event's occurrence, its effect on performance, and how long the noncomplying party expects it to last. The noncomplying party shall update that information as reasonably necessary. During a Force Majeure Event, the noncomplying party shall use reasonable efforts to limit damages to the other party and to resume its performance under this Contract.

16. ILLEGAL ALIENS

Contractor warrants it does not knowingly hire or engage any illegal aliens or persons not authorized to work in the United States; it takes steps to verify that it does not hire or engage any illegal aliens or persons not authorized to work in the United States; and, that any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach of this Contract and shall be cause for termination.

17. REQUIRED CERTIFICATIONS

- A. Boycott of Israel. Pursuant to Idaho Code § 67-2346, if payments under the Contract exceed one hundred thousand dollars (\$100,000) and Contractor employs ten or more persons, Contractor certifies that it is not currently engaged in, and will not for the duration of the Contract engage in, a boycott of goods or services from Israel or territories under its control. The terms in this section defined in Idaho Code § 67-2346 shall have the meaning defined therein.
- B. Ownership or Operation by China. Pursuant to Idaho Code § 67-2359, Contractor certifies that it is not currently owned or operated by the government of China and will not for the duration of the Contract be owned or operated by the government of China. The terms in this section defined in Idaho Code § 67-2359 shall have the meaning defined therein.

18. ENTIRE AGREEMENT/MERGER

This Contract sets forth the entire agreement between the parties related to the subject matter of this Contract and may not be modified unless in writing and signed by both parties.

19. SEVERABILITY

If any part of this Contract is declared invalid or becomes inoperative for any reason, such invalidity or failure shall not affect the validity and enforceability of any other provision.

20. SURVIVAL

All terms in this Contract that might involve performance subsequent to termination or expiration of this Contract or that cannot be reasonably ascertained or fully performed until after termination or expiration of this Contract shall survive. Survival of such terms shall not extend in violation of Article VII, Section 11 of the Idaho Constitution and Idaho Code §§ 59-1015 through 59-1017.

21. NO WAIVER

The failure by one party to require performance of any provision shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Contract be construed as or deemed to be a waiver of any subsequent breach or default.

22. EFFECT OF SECTION HEADINGS

The section headings appearing in this Contract are not interpretations of the text but are inserted for convenience and reference only.

23. SOVEREIGN IMMUNITY

Nothing contained in this Contract shall be considered a waiver of the State's sovereign immunity, which immunity is expressly reserved.

24. GOVERNING LAW

This Contract shall be governed by and construed under the laws of the State of Idaho and the parties consent to the jurisdiction of the state courts of Ada County in the State of Idaho in the event of any dispute with respect to this Agreement.

25. NOTICES

All notices shall be in writing and sent certified mail, postage prepaid, return receipt requested to:

Idaho Water Resource Board

Attn: Purchasing Agent
PO Box 83720
Boise, ID 83720-0098

Contractor

Address listed in the
Contractor's Signature Block

Attachment B

ARPA Grant Funding Contract Provisions

1. REMEDIES FOR NONCOMPLIANCE.

If Contractor fails to comply with the U.S. Constitution, Federal or State statutes, regulations or the terms and conditions of this Contract, the Board may impose additional conditions. If the Board determines that noncompliance cannot be remedied by imposing additional conditions, the Board may take one or more of the following actions, as appropriate in the circumstances:

- a) Temporarily withhold cash payments pending correction of the deficiency by the Contractor or more severe enforcement action by the U.S. Department of Treasury or the Board.
- b) Disallow all or part of the cost of the activity or action not in compliance.
- c) Wholly or partly suspend or terminate the Contract.
- d) Recommend the U.S. Department of Treasury initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and the U.S. Department of Treasury regulations.
- e) Withhold further funds for the project or program.
- f) Take other remedies that may be legally available.

2. ENVIRONMENTAL REGULATIONS

- A. If this Contract is for more than \$150,000, Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the U.S. Department of Treasury and the Regional Office of the Environmental Protection Agency (EPA).
- B. Any of Contractor's contracts related to this Contract that exceed \$150,000 must contain the language in Section 2.A above.

3. CONTRACT WORK HOURS AND SAFETY STANDARDS.

Contractor shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

4. DEBARMENT & SUSPENSION

Contractor warrants it is not, and shall ensure any of its contractors related to this Contract are not, listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension."

5. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

Contractor is prohibited from obligating or expending loan or grant funds to: (1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- a) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- b) Telecommunications or video surveillance services provided by such entities or using such equipment.
- c) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

6. DOMESTIC PREFERENCE FOR PROCUREMENTS

Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this Contract. For purposes of this section:

- a) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- b) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

7. BUY AMERICA PREFERENCE

Contractor shall comply with section 70914 of the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, which requires:

- a) All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- b) All manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.
- c) All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States

8. PROCUREMENT OF RECOVERED MATERIALS

- A. In the performance of this Contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired: i. Competitively within a timeframe providing for compliance with the Contract performance schedule; ii. Meeting Contract performance requirements; or iii. At a reasonable price.
- B. Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>.
- C. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

9. MINORITY AND WOMEN BUSINESS ENTERPRISES

Contractor agrees to take affirmative steps to assure that women and minority businesses are used when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:

- a) Including qualified women's business enterprises and small and minority businesses on solicitation lists;
- b) Assuring that women's enterprises and small and minority businesses are solicited whenever they are potential sources;
- c) When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum participation by small and minority business, and women's business enterprises;
- d) Where the requirement permits, establishing delivery schedules which will encourage participation by women's business enterprises and small and minority business;
- e) Using the services and assistance of the Small Business Administration, and the U.S. Office of Minority Business Development Agency of the Department of Commerce; and

- f) If Contractor hires any subcontractors, Contractor must take the affirmative steps in a through e above.

10. GENERAL PROCUREMENT STANDARDS

- A. Contractor must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under this Contract. Contractor's documented procurement procedures must conform to the procurement standards identified in 2 C.F.R. §§ 200.318 through 200.327.
- B. Contractor must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- C. Written Standards of Conduct
 - a. Contractor must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by this Contract if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of Contractor may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, Contractor may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of Contractor.
 - b. If Contractor has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, Contractor must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, Contractor is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.
- D. Contractor's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
- E. To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across, Contractor is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for

procurement or use of common or shared goods and services. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.

- F. Contractor is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- G. Contractor is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.
- H. Contractor must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also 2 C.F.R. § 200.214.
- I. Contractor must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- J. Time and Materials Contract
 - a. Contractor may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to Contract is the sum of:
 - i. The actual cost of materials; and
 - ii. Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.
 - b. Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, Contractor awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.
- K. Contractor alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve Contractor of any contractual responsibilities under its contracts. The Department of Treasury will not substitute its judgment for that of Contractor unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

11. REAL PROPERTY.

- A. Title. Subject to the requirements and conditions set forth in this section, title to real property acquired or improved under this Contract will vest upon acquisition in the Contractor.
- B. Use. Except as otherwise provided by Federal statutes or by the Department of Treasury, real property will be used for the originally authorized purpose as long as needed for that purpose, during which time Contractor must not dispose of or encumber its title or other interests.
- C. Disposition. When real property is no longer needed for the originally authorized purpose, Contractor must obtain disposition instructions from the Department of Treasury or Board. The instructions must provide for one of the following alternatives:
 - a. Retain title after compensating the Department of Treasury. The amount paid to the Department of Treasury will be computed by applying the Department of Treasury's percentage of participation in the cost of the original purchase (and costs of any improvements) to the fair market value of the property. However, in those situations where Contractor is disposing of real property acquired or improved with this Contract and acquiring replacement real property under the same Contract, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.
 - b. Sell the property and compensate the Department of Treasury. The amount due to the Department of Treasury will be calculated by applying the Department of Treasury's percentage of participation in the cost of the original purchase (and cost of any improvements) to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If this Contract has not been closed out, the net proceeds from sale may be offset against the original cost of the property. When Contractor is directed to sell property, sales procedures must be followed that provide for competition to the extent practicable and result in the highest possible return.
 - c. Transfer title to the Department of Treasury or to a third party designated/approved by the Department of Treasury. Contractor is entitled to be paid an amount calculated by applying Contractor's percentage of participation in the purchase of the real property (and cost of any improvements) to the current fair market value of the property.

12. ACCESS TO RECORDS

At all reasonable times during the term of this Contract and for a period of three years following final settlement, Contractor shall provide the U.S. Department of Treasury, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions. Access also includes timely and reasonable access to Contractor's personnel for the purpose of interview and discussion related to such documents. This requirement is in addition to the requirements of the

Attachment A, Section XVI, Retention of Records and Access to Facilities, Premises, and Records.

13. SINGLE AUDIT

The total funds disbursed per this Contract are considered federal financial assistance per the Single Audit Act of 1984, as amended by the Single Audit Act Amendments of 1996 (SAA), 31 U.S.C. §§7501-7507. (2000). If Contractor expends more than \$750,000 of any federal funds in a fiscal year, Contractor shall conduct an audit in accordance with the SAA. In such case, the Contractor shall provide the Board a copy of the SAA audit within nine (9) months of the end of the audit period per the SAA. Contractor recognizes that it is responsible for determining if the \$750,000 threshold is reached and if a SAA audit is required. Additionally, Contractor shall inform the Board, in writing, of findings or recommendations pertaining to the funds contained in any SAA audits conducted by the Board.

14. CONFLICT OF INTEREST

- A. No employee, officer, or agent of Contractor may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of Contractor may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, Contractor may set standards for situations in which the financial interest is not substantial, or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of Contractor.
- B. If Contractor has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, Contractor must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, Contractor is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

15. LABOR STANDARDS AND WAGES

Contractor shall require strong labor standards to promote effective and efficient delivery of high-quality infrastructure projects while also supporting the economic recovery through strong employment. All laborers and mechanics employed by the prime construction contractor and subcontractors in the project using Contract funds shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality. The Contractor shall document to the Board how prevailing wages will be satisfied by including in the bidding documents one of the following provisions:

- a) Davis Bacon Wages: The prevailing wage rates and instructions for reporting, as established by the United States Department of Labor (subchapter IV of Chapter 31 of title 40, United States Code), or
- b) Project Employment and Local Impact Report: The Report shall include but is not limited to: Number of employees working on the project, number of employees on the project hired directly and hired through a third party, wages and benefits of workers on the project by classification, local hiring, project labor agreement, community benefit agreements, prevailing wage agreements, and/or other information demonstrating strong employment opportunities for workers.

16. CONTRACT WORK HOURS AND SAFETY STANDARDS

Where applicable, all contracts awarded by Contractor in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

17. DISCRIMINATION PROHIBITED

Contractor shall comply with the following statutes and regulations that prohibit discrimination:

- A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;
- B. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
- C. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
- D. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
- E. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs,

activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

18. EQUAL EMPLOYMENT OPPORTUNITY

- A. Contractor shall comply with Executive Order 11246, “Equal Employment Opportunity,” as amended by EO 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- B. Contractor shall include the language in Section 17.A above in all contracts that meet the definition of Federally Assisted Construction Contract. “Federally Assisted Construction Contract” means any agreement or modification thereof for construction work which is paid for in whole or in part with funds obtained from this Contract.

19. INCREASING SEAT BELT USE IN THE UNITED STATES.

Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Contractor should encourage its contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

20. REDUCING TEXT MESSAGING WHILE DRIVING.

Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Contractor should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Contractor should establish workplace safety policies to decrease accidents caused by distracted drivers.

21. MANDATORY DISCLOSURES

Contractor must disclose, in a timely manner, in writing to the Board all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting this Contract. Contractor is required to report certain civil, criminal, or administrative proceedings to SAM (currently FAPIIS). Failure to make required disclosures can result in any of the remedies described in Section 1 above. (See also 2 CFR part 180, 31 U.S.C. 3321, and 41 U.S.C. 2313.)

22. INSURANCE COVERAGE

Contractor must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Contract funds as provided to property owned by the Contractor.

23. COMPLY WITH ALL APPLICABLE LAWS

Contractor shall comply with all applicable federal, state, and local laws, including the conditions and requirements of the federal American Rescue Plan Act Coronavirus State Fiscal Recovery Fund (codified as 42 U.S.C. 802), including all implementing regulations (31 CFR 35.1 et seq.) from the U.S. Department of the Treasury.

24. GENERAL PROVISIONS

- A. Contractor's right to request disbursements under this Contract terminates on December 1, 2026. Activities and expenses occurring after December 1, 2026, are the responsibility of the Contractor.
- B. Contractor will provide proof of an assigned Unique Entity Identifier and active registration with SAM (<https://www.sam.gov>) if not already obtained, prior to the first disbursement. Further disbursements will be made contingent on Contractor providing proof that all requested information to SAM has been submitted. Contractor will maintain active registration with SAM throughout the lifetime of the award, pursuant to 2 CFR 25.
- C. In addition to other provisions required herein, all contracts made by Contractor under this Contract must contain the provisions listed in Appendix II to 2 C.F.R. Part 200.

25. BYRD ANTI-LOBBYING.

Contractor must sign the Certification Regarding Lobbying provided on the next page.

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of their knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all contractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Date

MEMO



To: Idaho Water Resource Board
From: Neeley Miller, Planning & Projects Bureau
Date: January 8, 2024
Subject: Regional Water Sustainability Priority List

REQUIRED ACTION: Consider requests to be added to the Regional Water Sustainability Priority List

Background

In July 2021 the IWRB adopted an initial Regional Water Sustainability Priority List to help guide the Idaho Water Resource Board's (IWRB's) spending for large, regional water sustainability projects from ARPA funds, state general funds, or other applicable sources. The IWRB also, in January 2022, adopted threshold criteria indicating that for a project to be included on the Regional Water Sustainability Priority List it must "help achieve water supply sustainability on a regional, basin-wide, or state wide basis."

On October 26th 2022 the IWRB adopted criteria for the inclusion of projects on the Regional Water Sustainability Priority List. The criteria include a process for how projects can be added, types of information required to be submitted in requests, considerations for inclusion, and a process for removing projects from the list. The IWRB also set a deadline of December 1 (annually) for requests to be submitted. On December 1, 2022, the IWRB received 15 requests to remain on or be added to the list. In January 2023 the IWRB updated the List.

At the July 2023 IWRB meeting in Moscow the IWRB approved nine Regional Water Sustainability Projects statewide for a total of \$59.4 million. The regional projects were funded with federal American Rescue Plan Act (ARPA) monies and state surplus funds allocated to the Board's Water Management Account by Governor Little as part of his Leading Idaho initiative and the Idaho Legislature.

On December 1, 2023 the IWRB received two requests to be added to the list.

1) City of Nampa Drain Recharge and Floodwater Storage Planning Study

- To evaluate drain flows in the Treasure Valley and identify locations for water storage to improve drain flows, capture and mitigate flood water, and improve water management in the area as well as for downstream users.
- A focus will be made on finding existing publicly owned land and water bodies to store floodwater to keep the cost of the projects affordable.
- Request funding up to \$200,000 (total cost of project)

2) City of Twin Falls Harrison Water Storage Tank / Pump & Canyon Springs Pump Station

- Construction of a water storage tank (10 million gallon) and associated pump replacement for use at the City's key location on Harrison St. Construction and pump improvements at the Canyon Springs site, and backup generators
- Request funding in the amount of \$36,772,000 (total cost of project)

MEMO



To: Idaho Water Resource Board
From: Neeley Miller, Planning & Projects Bureau
Date: January 8, 2024
Subject: Regional Water Sustainability LOID Funding Request

REQUIRED ACTION: Consider request for funding from Lewiston Orchards Irrigation District (LOID)

Background

In July 2021 the IWRB adopted an initial Regional Water Sustainability Priority List to help guide the Idaho Water Resource Board's (IWRB's) spending for large, regional water sustainability projects from ARPA funds, state general funds, or other applicable sources. The initial Regional Water Sustainability Priority list included a reference to the Lewiston Orchards/Lower Clearwater Water Exchange Project. On November 28, 2022, LOID submitted a request to the IWRB to remain on the Priority List. The IWRB chose to keep the LOID project on the list. On December 4, 2023, LOID submitted a request for funding to move forward with a replacement irrigation water supply. They are requesting \$1,287,000 in funding to move the engineering and design to the 30% level.

Staff from LOID will attend the Finance Committee and will provide more information at the meeting.

Attachment(s):

Funding Request Letter



December 4, 2023

Neeley Miller
Idaho Water Resource Board
Boise, Idaho

Dear Idaho Water Resource Board:

On behalf of the Lewiston Orchards Irrigation District Board of Directors, thank you for placing the Lower Clearwater Exchange Project (LCEP) on the State's Regional Water Sustainability List. In order to move forward with a replacement irrigation water supply for the Lewiston Orchards Project, further engineering is needed. The Lewiston Orchards Irrigation District and the Nez Perce Tribe paid for a ten percent design to get a valid project estimate.

We respectfully request \$1,287,000 in funding to move the design to the 30% level. Attached is the draft engineering contract from our Engineer of Record, J-U-B. This design work will update the ten percent concept design. This level of design is needed to determine the appropriate placement of the river intake structure and route of the pipeline. The contract also includes negotiations for access from the Army Corps of Engineers, railroad and landowners.

The US BOR has completed their study of the Lewiston Orchards aquifer and has indicated verbally that they concur with the District's and the State's assessment that the aquifer cannot sustain long-term irrigation withdrawals. The Nez Perce Tribe has verbally agreed to a water supply from the Clearwater River but would like more details. The 30% design should help with this and would allow for the progress of any needed environmental and cultural resource work.

The LOID intends to participate in funding the project through construction of the transmission pipeline. Conversations continue with the US BOR and the Nez Perce Tribe to solidify construction funding.

We hope you will give favorable approval of the much needed funds to move this project forward.

Sincerely,

A handwritten signature in blue ink that reads "Barney Metz". The signature is fluid and stylized, with a long horizontal line extending from the end.

Barney Metz
District Manager

LEWISTON ORCHARDS PROJECT Water Exchange

2024 Idaho Water Resource Board Presentation

A collaborative, consensus-based effort...



... with the support and involvement of many partners ...

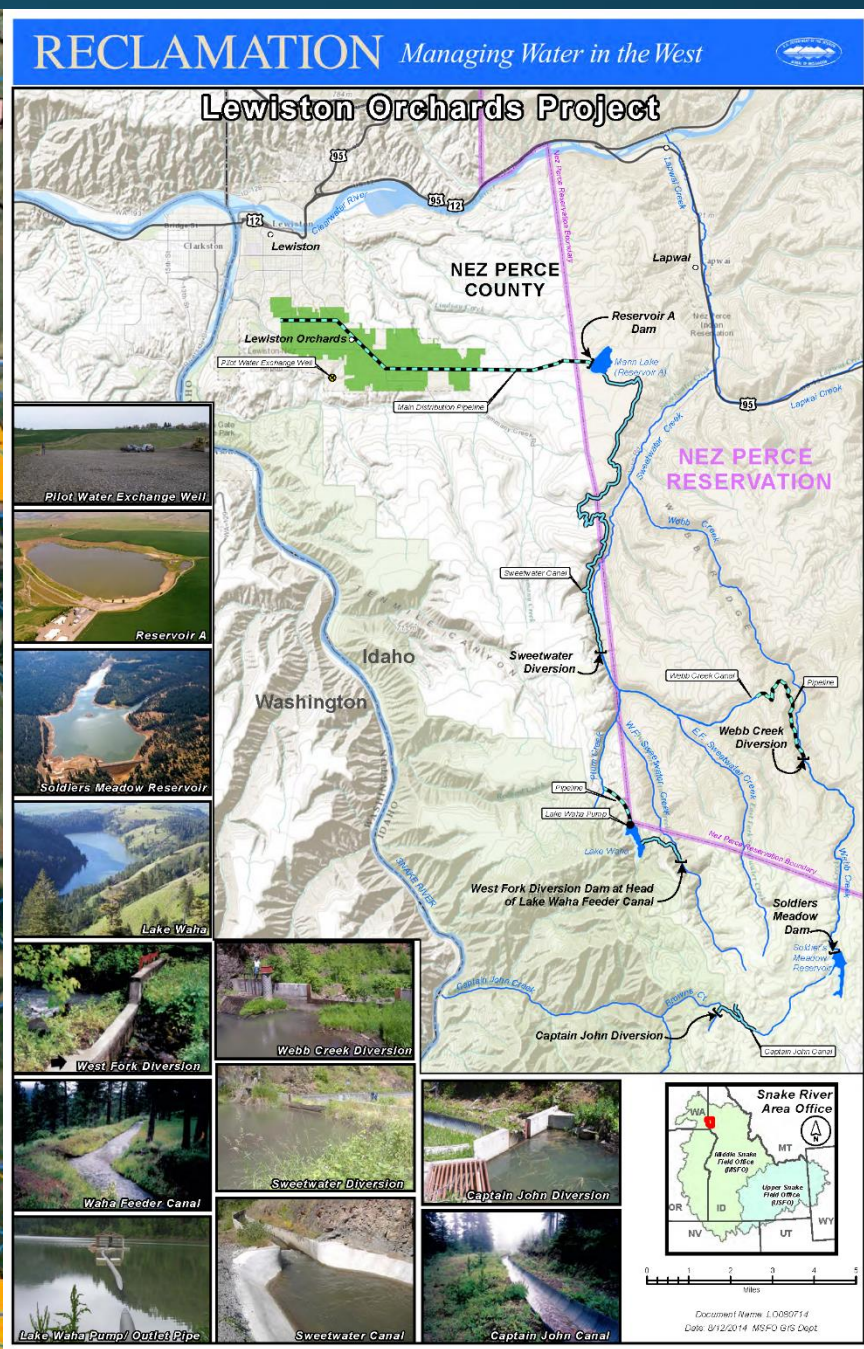
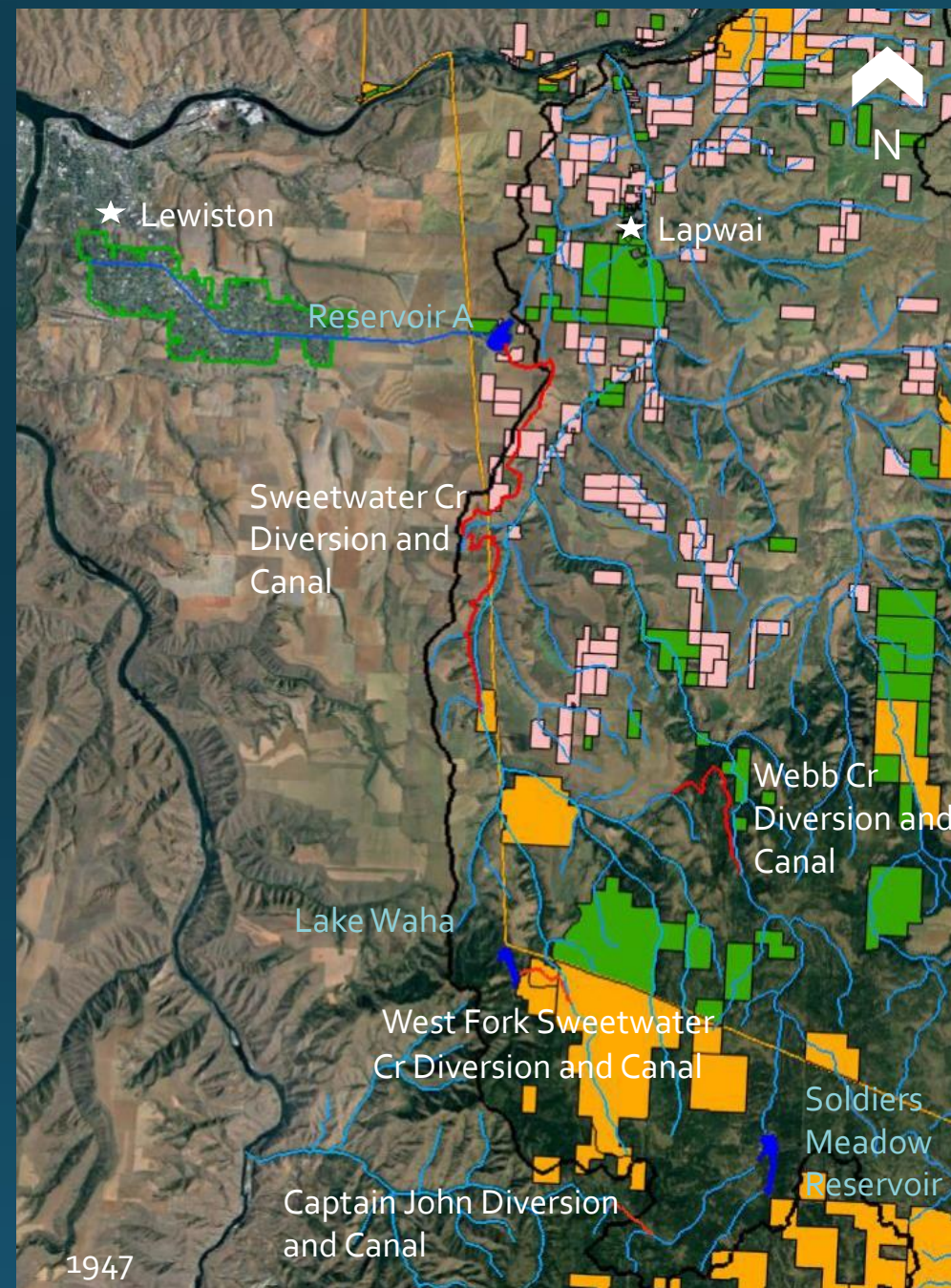
- **Active Participants**

- Senator Crapo
- Senator Risch
- Congressman Fulcher

- **Formal letters of support for concept**

- Former Governor Otter
- University of Idaho Waters of the West Program
- NOAA Fisheries Northwest Region
- Columbia River Inter-Tribal Fish Commission
- Trout Unlimited





OBJECTIVES

Permanently solve 3 long-standing problems with existing Lewiston Orchards Project

- (1) Inadequate water quantities, quality, and reliability for Lewiston Orchards Irrigation District.
- (2) Adverse effects on the Nez Perce Tribe and its people, including impacts to natural resources and to cultural and religious water uses, resulting from predominant location of the LOP on the Nez Perce Reservation.
- (3) Adverse effects on ESA listed Snake River A-run steelhead from the existing LOP and its location on ESA-designated critical habitat.

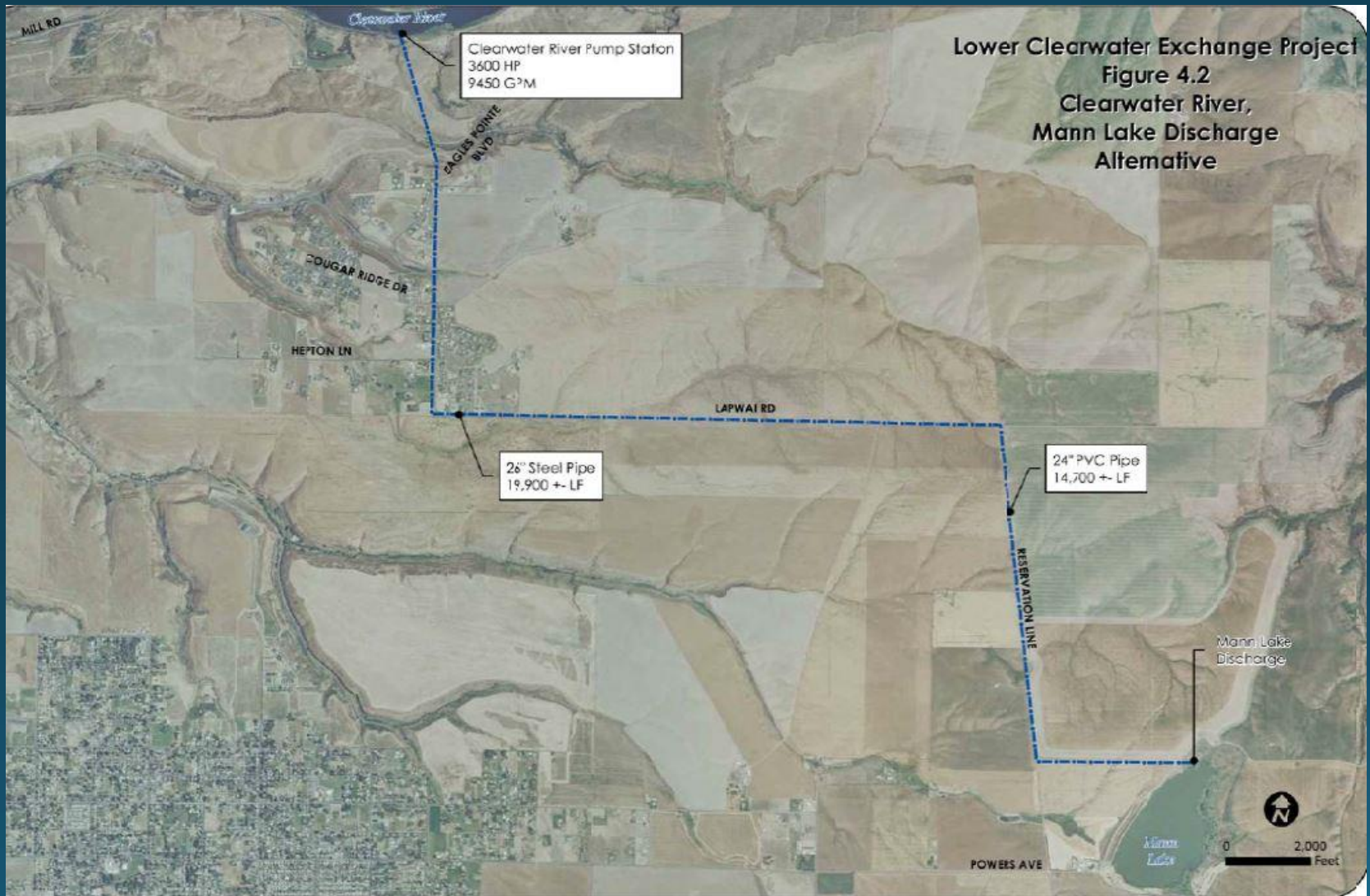
Inadequate water quantities, quality, and reliability for Lewiston Orchards Irrigation District.

- Provides irrigation water to approximately 22,000 patrons in a 3,828 - acre service area
- LOID has never delivered 2.2 AF of the water contracted with Reclamation due to inadequate surface water supply
- 2010 minimum flows established in Sweetwater and Webb Creeks further reducing availability to patrons
- Since 2000 patrons have been placed on restrictions at times
- Craig Mountain area is predicted to go from snow to rain events with climate change
- Early runoff can NOT be captured as diversion right is from Feb-Oct per the BiOP
- In the drought of 2021, running the 1st 2 Irrigation Wells placed a senior water right domestic well in jeopardy and had to be turned off
- Regional aquifer has shown a decline by IDWR staff of up 6 ft/year

Adverse effects on ESA-listed Snake River steelhead from the existing LOP and its location on ESA-designated critical habitat.



Pipeline Path



Provide More Detail and Reduce Risk

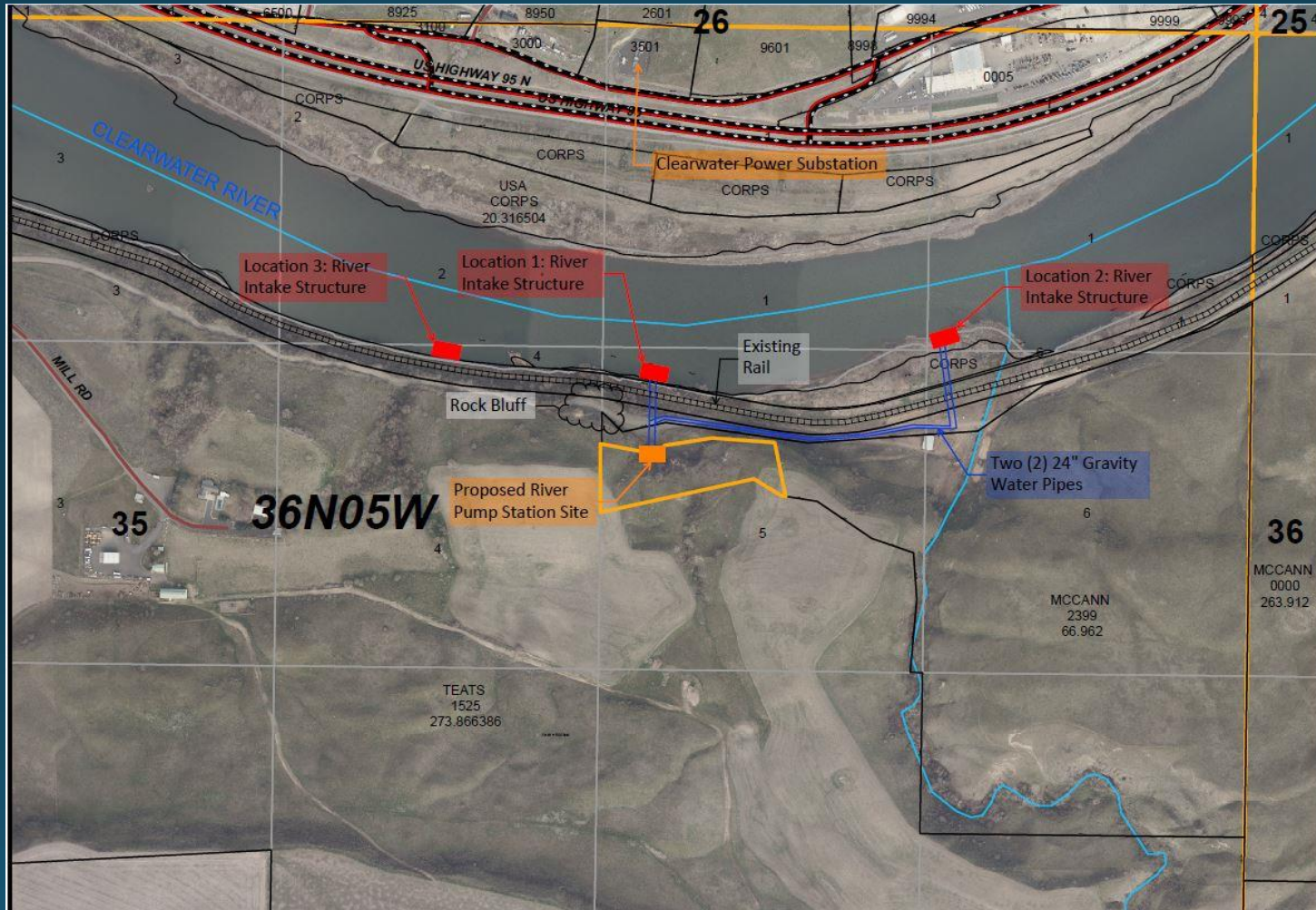


Figure 2 River Intake Structure and Pump Station Area Map

LOID Clearwater River Pump Station Design Concept Report



Key points moving forward

- 30% Design Keeps the project moving and is key
 - To secure critical easements and ROW's
 - To take advantage of a favorable political climate
- The 30% Design cost is \$1,287,000

Key points moving forward

- BOR, NPT, LOID, LCEP continue to work together to fund an alternative solution
- Removal of Lower Granite Dam will reduce the operating levels of the regional aquifer
- Project is key to address climate change in the Lower Clearwater basin by providing a cold water refugia for endangered fish

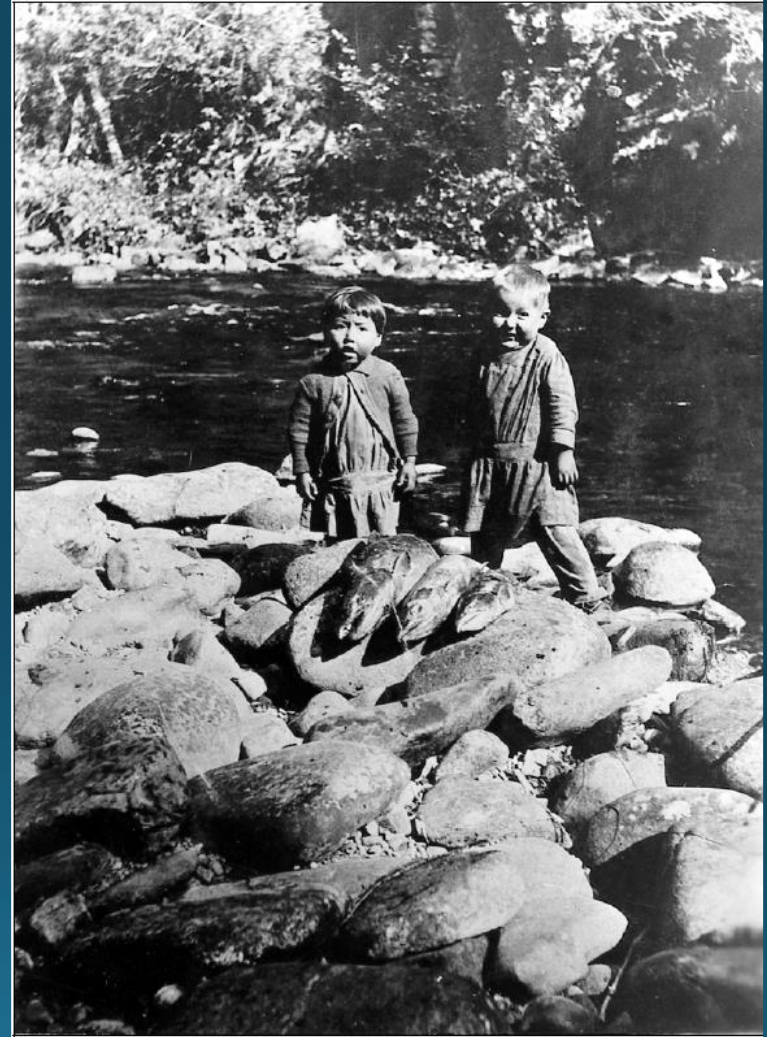
Costs

- The LOID/NPT completed engineering design to a 10% level to determine general feasibility and get a cost estimate to complete the project
- That 10% design estimate is \$60,000,000
 - RISK = \$\$\$
- Next step is securing easements, right of ways, and narrowing the uncertainty of the remaining pieces of the puzzle.
 - Reducing RISK

Recap of why we are a good fit

- This project helps achieve water sustainability for a north central Idaho and helps with multiple public benefits
- This project is collaborative from the Federal Government, Congressionals, Local, Tribal, Environmental Partners, and LOID patrons
- This project will protect our local groundwater, using surface water first for irrigation and fire suppression, and not contribute to a Groundwater Management area being worsened

Questions





Accountability Report

Idaho Department of Water Resources

For the period July 1, 2019, through June 30, 2022

Legislative Services Office Audits Division

Published [X](#)



SUMMARY

April Renfro, Legislative Auditor



PURPOSE OF THE ACCOUNTABILITY REPORT

We completed an accountability report for the Idaho Department of Water Resources (Department) covering the period July 1, 2019, through June 30, 2022. Our report includes the results of procedures completed to review the following areas: Appropriation Compliance, Cash Balances, and Statewide Groundwater Quality Monitoring Program. We also reviewed general administrative procedures and accounting controls to determine that activities are properly recorded and reported.

The intent of this review was not to express an opinion but to provide general assurance on internal controls over the areas reviewed, and to raise the awareness of management and others of internal control weaknesses, noncompliance, or other conditions that came to our attention and offer recommendations for improvement.

CONCLUSION

We identified deficiencies to report.

FINDINGS AND RECOMMENDATIONS

There is one finding and recommendation in this report.

Finding 1 – Significant errors were found in spreadsheets used to monitor the cash balances for the Revolving Development Fund, Water Management Fund, and the Secondary Aquifer Planning and Management Fund.

The complete finding is detailed on page 6 of this report.

PRIOR FINDINGS AND RECOMMENDATIONS

The prior report contained three findings and recommendations, which were evaluated as part of the follow-up work. Two findings were corrected, and one remained open. The one remaining open finding was evaluated as part of the current review and satisfactorily corrected.

Follow up on the prior findings and recommendations is detailed on page 9 of this report.

MANAGEMENT'S VIEW

The Department has reviewed the report and is in general agreement with the contents.

FINANCIAL INFORMATION

The following fiscal year 2022 financial data is for informational purposes only.

Fund No.	Fund Title	Beginning Appropriation/ Cash Balance	Receipts/ Transfers-In	Disbursements/ Transfers-Out	Ending Appropriation/ Cash Balance
0001	General Fund*	\$20,564,800	\$24,729	\$14,286,721	\$6,302,808
0125	Indirect Cost Recovery	601,098	521,803	537,377	585,524
0128	Technology Infrastructure Stabilization	197,924			197,924
0129	Aquifer Planning and Management	23,815,964	12,151,729	7,389,911	28,577,782
0229	State Regulatory Funds	1,009,165	1,511,056	1,421,941	1,098,280
0337	Water resource Adjudication	296,717	118,160	208,520	206,357
0348	Federal Fund **	(19,879)	1,292,776	1,308,612	(35,715)
0349	Miscellaneous Revenue Fund	257,336	1,181,248	1,262,504	176,080
0490	Rural Rehabilitation Funds	104,409,947	9,337,297	5,910,370	107,836,874
0630	Custodial Funds	82,024	191,340	191,720	81,644
Total		\$151,215,096	\$26,330,138	\$32,517,676	\$145,027,558

* At year-end, \$104,785.92 was encumbered and \$6,198,022.56 was reverted in General Fund 0001.

** The Federal Fund has a borrowing limit of \$300,000.

OTHER INFORMATION

We discussed other issues which, if addressed, would improve internal control, compliance, and efficiency.

This report is intended solely for the information and use of the State of Idaho and the Idaho Department of Water Resources and is not intended to be used by anyone other than these specified parties.

A copy of this report and prior reports are available on our [website](#) or by calling 208-334-4875.

We appreciate the cooperation and assistance given to us by the director, Mathew Weaver, and his staff.

ASSIGNED STAFF

Kellie Bergey, CPA, Managing Auditor
J.E. Bowden, CPA, CFE, Senior Supervising Auditor
Brayden Davis, Associate Auditor
Kara Perry, CFE, Associate Auditor Intern

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OBJECTIVE

Our objective was to conduct a review of the Department as part of our compliance with Idaho Code, Section 67-702(1)(c). The review may include an evaluation of internal controls over financial and program activities and other matters related to its operations. We reviewed appropriation compliance, cash balances, the Department's Statewide Groundwater Quality Monitoring Program as well as general receipts and expenditures. This report covers July 1, 2019, through June 30, 2022.

The intent of this review was not to express an opinion but to provide general assurance about the reviewed financial and program activities administered by the Department and to raise awareness of management and other stakeholders of any deficiencies or areas of concern that may have come to our attention and offer recommendations for improvement.

BACKGROUND

The Department is divided into five major programs for budgeting purposes.

1. The Management and Support Services Program provides administrative, legal, and information system support for the Department.
2. The Planning and Technical Services Division provides staff support for the Water Resource Board and provides planning and project management for water sustainability and aquifer stabilization, technical analysis, and ground water monitoring.
3. The Water Management Division provides water resource protection through inspection and regulatory programs and provides water allocation services through permits and water distribution programs. The division also includes the remaining responsibilities of the Snake River Basin Adjudication Program was rolled into the Water Management Program in 2008. The Snake River Adjudicative Program is responsible for completing a fair and accurate determination of the nature, extent, and priority of Snake River Basin water rights.
4. The Northern Idaho Adjudication Program is responsible for completing a fair and accurate determination of the nature, extent, and priority of the water rights north of the Snake River Basin.
5. House Bill 382 of 2020 authorized a general water rights adjudication the Bear River Basin. The Legislature authorized funding in fiscal year 2022 to begin the adjudication of the Bear River Basin.

The Department is funded through the general fund, various dedicated funds, and federal funds.

METHODOLOGY

As part of our review, we identified specific scope areas to evaluate compliance, accuracy, and proper internal controls at the Department. We performed the following procedures to support the conclusion reached in this report.

Appropriation Compliance

We documented the Department's processes and controls to ensure that appropriations were being used for the specified purpose. We reviewed and tested the Department's budget monitoring process, compared budget to actual expenditures and reviewed budgetary line items to determine if funds were spent as appropriated, and investigated any variances found. There were no findings related to this scope area.

Cash Balances

We obtained an understanding and documented the procedures and internal controls used by the Department to ensure the cash balances within Fund 0129-01 and Funds 0490-01 and 0490-02 are accurate and properly committed for the purposes of the funds.

The Department completes a monthly reconciliation of the cash balances within each fund to determine how much is committed or uncommitted to various projects, as well as allocate uncommitted funds based on the Idaho Water Board's resolutions. The reconciliations are prepared using Excel spreadsheets that build from month to month. Due to the cumulative nature of these reconciliations, we selected the June 2022 reconciliation for each fund to determine if there were any formula errors, incorrect information or other errors that could impact the decisions made by the Water Board. Our testing identified deficiencies in internal control and substantive errors. See Finding 1 below for additional information.

Statewide Groundwater Quality Program

We obtained an understanding and documented the procedures and internal controls used by the Department to ensure that it is monitoring the appropriate wells and that the tests conducted meet the various requirements of the Statewide Groundwater Quality Program. During our review, we selected a sample of 30 wells, 10 from each fiscal year, to ensure the Department was monitoring the wells in compliance with its rotation schedule as well as publishing the data and reports collected on these wells. We performed an analytic of all the tests performed at each well and compared this to the required listing for that year's testing to ensure all required tests were performed at each well. Additionally, we completed another analytic to ensure that the Department was complying with its plan to routinely monitor all wells within the established population of testing wells each year. Finally, we reviewed the control activities in place by reviewing documentation of each year's testing to ensure that the control activity was implemented, documented, and working as intended. There were no findings related to this scope area.

General Receipts

We obtained an understanding of the Department's processes and controls of its general receipting activities. We first selected 30 general receipts, 10 from each fiscal year, and completed tests to ensure established control activities were present and functioning as intended. These tests also included tracing receipts to supporting documentation to ensure the proper amounts were correctly recorded within the accounting system as well as compliance testing to ensure amounts collected were in compliance with Idaho Statute and Department rules. Based on our testing, no errors were found. Additionally, we tested the internal control activities related to the monthly reconciliation of receipts recorded within the Department's in-house receipting database and STARS. We selected a sample of 6 months out of 36 months (17 percent) within the review period, two from each fiscal year. There were no findings related to this scope area.

General Expenditures

We obtained an understanding of and documented the Department's process and controls for operating expenditures. During this process, we divided our testing into three areas: P-Card Expenditures, Travel Expenditures, and all other general expenditures. For each of these areas we selected a sample of 30 transactions, 10 from each fiscal year, to perform internal control and substantive testing, as well as test for compliance with State and Department policies. There were no findings related to this scope area.

CONCLUSION

We identified a deficiency related to the activities overseen by the Department.

DRAFT

FINDINGS AND RECOMMENDATIONS

Finding 1 – Significant errors were found in spreadsheets used to monitor the cash balances for the Revolving Development Fund, Water Management Fund, and the Secondary Aquifer Planning and Management Fund.

Type of Issue: Internal Control Deficiency, Substantive Error

Criteria: The *Internal Control Integrated Framework* published by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) provides a basis for organizations to design internal control procedures to ensure reliable financial reporting, effective and efficient operations, and compliance with applicable laws and regulations. Components of this framework include risk assessment and control activities. Risk assessment is the identification and analysis of various risks entities face because of changing economic, industry, regulatory, and operating conditions. It provides a basis to develop appropriate responses to manage those risks. Control activities are policies and procedures that help ensure management directives are carried out and risks are mitigated. Verifications, approvals, reconciliations, authorizations, and segregation of duties are all control activities that support this objective.

Condition: Monthly reconciliations are completed for the Revolving Development Fund (Fund 0490-01), Water Management Fund (Fund 0490-02), and the Secondary Aquifer Planning and Management Fund (Fund 129-01). These reconciliations are performed to determine how much funding has been committed to various projects and the overall cash balance of the fund. These reconciliations are then presented to the Water Resources Board (Board). The Board uses this information to allocate funding to various projects.

In determining our sample, we noted that the monthly reconciliations were cumulative; as such, we selected the June 2022 reconciliation to test. We were unable to perform control testing as the review performed of the reconciliation was not documented. Our substantive testing consisted of a review of the tracking spreadsheets to ensure the formulas were appropriate and reasonable. Additionally, we selected a sample of line items from each tracking spreadsheet to trace to expenditure queries from the accounting system, contracts, and reports from the Board to ensure that the information entered was supported and accurate. We noted errors on the reconciliations for Funds 0490-01 and 0129-01; no errors were noted for Fund 0490-02. Below are the errors noted:

Revolving Development Fund (0490-01)

- Ending cash balance did not agree with STARS; the workbook contained an understatement of \$4,930,720.

- Formula errors were found in the workbook resulting in the total committed fund balance to be understated by \$29,146,055 and the uncommitted fund balance to be overstated by \$10,239,120.

Secondary Aquifer Planning and Management Fund (0129-01)

- \$8,350 in expenditures for Mountain Home Air Force Base (MHAFB) Water Sustainability project was not included in the calculation of the committed balance, resulting in an overstatement.
- SRAS Operations (PCA- 29822) expenditures were overstated by \$2,745.
- WS Hydrology Monitoring (PCA- 29847) expenditures were overstated by \$182,522, and WS Studies (PCA 29844) expenditures were understated by \$185,522. This created a negative remaining balance for PCA 29847 and overstated the balance of funding remaining for PCA 29844.

Cause: The current review process does not involve ensuring the integrity of the formulas within the spreadsheet, but rather is a high-level review checking for new information being added to the workbooks.

Effect: The Board utilizes these reports to make funding decisions. Inaccuracies in the information provided could lead the Board to make commitments without available cash.

Recommendation: We recommend that the Department establish effective internal controls to ensure data is properly entered into the workbooks and that reviews are completed at the level necessary to determine if errors are present.

Management's View and Corrective Action Plan:

Auditor's Concluding Remarks:

MANAGEMENT'S VIEW AND CORRECTIVE ACTION PLAN

DRAFT

PRIOR FINDINGS AND RECOMMENDATIONS

Finding 1 – The Department does not ensure monthly progress reports on flood management grant projects are received as required by its internal flood management grant program guidelines.

Recommendation: We recommended that the Department collect the monthly reports as required in the grant program guidelines or consider revising the guidelines to provide appropriate oversight for short-term projects.

Audit Follow Up: The Department revised the grant program guidelines and removed the requirement for monthly progress reports starting November 19, 2020. We reviewed the grant program guidelines and noted the removal of the requirement for monthly progress reports. We were able to confirm that the Department continues to complete progress reviews of projects for each reimbursement request.

Status: Corrected in the Annual Follow Up.

Finding 2 – The water supply bank receipt and payment transactions lacked documentation of independent reviews.

Recommendation: We recommended that the Department ensure independent reviews of payments made to owners and receipts from renters are consistently documented and maintained.

Audit Follow Up: The Division has implemented new policies and procedures relating to the processing and review of rents and payments. This included a requirement to audit at least 10% of leases to ensure correct amounts and fees are being charged and received. Additionally, each receipt is received by fiscal and reviewed by someone in the Water Supply Bank to ensure the amounts are correct and it is properly coded to the correct renter and water rights. Documentation of the audits are maintained in the audit review spreadsheet which are initialed by the auditor and again by an email sent from the Water Supply Bank Coordinator to indicate that they reviewed the issues found during the audit. Additionally, the review of the receipts is documented in the letters sent out to each renter. We were able to confirm this by reviewing the new policy and procedures manual and were also able to verify that the audit review spreadsheet was maintained as well as the follow up email from the Water Supply Bank Coordinator. We also were able to verify that receipt letters contained signatures of someone from the Water Supply Bank indicating the amounts were correct.

Status: Corrected in the Annual Follow Up.

Finding 3 – The receipts for the Revolving Loan Fund Program were not independently reviewed to ensure the accuracy of principal and interest calculations.

Recommendation: We recommended that the Department implement control procedures, which include training the senior financial specialist to ensure an independent review of the interest and principal calculations occurs.

Audit Follow Up: The Department has implemented new policies and procedures related to processing and review of Revolving Loan Fund program receipts. The Department trained the senior financial specialist to complete an independent review of the interest and principal calculations. We reviewed the new deposit instructions and noted the instruction to verify the loan amounts and initial and date after checking. We also completed testing of the newly implemented review procedures and found no deviations either in documenting the control or in the calculations.

Status: Corrected in the Annual Follow Up

APPENDIX

HISTORY

In 1894, Congress passed the Carey Act to encourage investment in the construction of irrigation systems for reclamation of arid lands. The Office of the State Engineer was created to administer the provisions of the Carey Act. Over the years, the agency's duties expanded, with the increasing value, development, and use of Idaho's limited water resources. The agency underwent several name changes including: The Department of Reclamation, State Reclamation Engineer, and the Department of Water Administration.

As it became more economical to lift water from underground aquifer systems, it became apparent that regulatory laws were needed to establish water rights and controls to prevent damage to aquifer systems. Groundwater laws were passed in 1951 (and amended in 1953) to establish a statutory procedure for granting a "priority" of rights to groundwater. Most regulatory controls centered on the State's internal use of water resources.

In the early 1960s, several national and international water transfer proposals were advocated, suggesting that water from the northwestern part of the United States could be transferred to the southwestern part. Consequently, in 1964 Idaho citizens ratified a constitutional amendment (Article XV, Section 7) authorizing creation of a water resource agency. In 1964, the Water Resource Board was created with the authority to prepare the state water plan for optimum development of water resources and to construct and operate water projects.

In 1974, the Department of Water Administration and Water Resource Board were combined under the Department of Water Resources.

In 1984, the State (through the Governor and the Attorney General) and Idaho Power agreed to negotiate a settlement over the Snake River water rights. Included in the agreement was a requirement to adjudicate all water rights in the Snake River Basin. The Snake River Basin Adjudication is the largest adjudication attempted in Idaho (possibly in the nation) and approximately 158,576 water right decrees have been issued by the court through August 2014 (including the disallowing of approximately 7,000 unclaimed water rights). The Northern Idaho Adjudication concerning the water rights north of the Snake River Basin (except for water rights in the Kootenai River water system) was added in 2007.

PURPOSE

The purpose of the Idaho Department of Water Resources (Department) is to assure optimum and beneficial utilization of the State's water resources by:

1. Assisting the Water Resource Board in developing plans to best utilize water resources.
2. Administering laws that protect and control the use of water resources.

STATUTORY AUTHORITY

Statutory authority for the Idaho Department of Water Resources is found in the Idaho Constitution, Article XV, Section 7, which states: "There shall be constituted a Water Resource

Agency composed as the Legislature may now or hereafter prescribe which shall have power to formulate and implement a State Water Plan.” The primary authority for the Department and Board, and its programs are included in Idaho Code, Title 42, Chapter 17 and Title 67, Chapter 33.

ORGANIZATION

The director is appointed by the Governor to serve at his pleasure and is directly responsible to the Governor. The Governor also appoints the eight-member Board to four-year terms. The Board assigns administrative duties and other functions to the director to enable the Board to carry out its powers and duties.

FUNDING

The Department receives funding from General Fund appropriations, fees, and federal sources.

General Fund (0001) – Appropriated funds are used to administer the constitutional and statutory requirements of the Department and to pay personnel costs, operating expenses, capital outlay, and trustee and benefit payments for the general operation of the Department.

Indirect Cost Recovery Fund (0125) – Money recovered from the indirect costs charged to federal agencies and other non-federal entities are used for administration costs of federal grants and other water projects.

Technology Infrastructure Stabilization Fund (0128) – Moneys in the technology infrastructure stabilization fund are used solely for technology projects that are requested, recommended, or funded through the annual state budget process.

Aquifer Planning and Management Fund (0129) – Appropriated funds are used for technical studies, facilitation services, hydrologic monitoring, measurement and comprehensive plan development, and other costs associated with the statewide comprehensive aquifer planning and management effort.

Secondary Aquifer Planning and Management Fund (0129-01) – Funding consists of monies appropriated to the fund, voluntarily contributed by water users or through water delivery entities or districts having authority to contribute, other contributions, gifts, or grants, and any other money provided by law. This fund was created and is continually appropriated to the Board for technical studies, project management services, hydrologic monitoring, measurement and comprehensive plan development, other costs associated with the statewide comprehensive aquifer planning and management effort.

Water Administration Fund (0229-21) – Fees collected from water right claim fees, permits to appropriate water and geothermal resources, well drillers’ licenses and permits, injection wells applications, reviewing safety of dams, water bank receipts, and penalties are used for the administration of the provisions of Idaho Code, Title 42.

Water Rights Enforcement Fund (0229-22) – Civil penalties collected by the Department for the illegal diversion or use of water are reserved, set aside and appropriated for the water rights enforcement program as directed by the Department director.

Water Resources Adjudication Fund (0337) – This fund was established as a result of legal decisions concerning the usage of water from the Snake River Basin. Receipts from filing fees for the adjudication of water rights are deposited and used to pay for costs attributable to the Snake River Basin Adjudication.

Northern Idaho Adjudication Fund (0337-01) – The collection of filing fees associated with the adjudication of water rights north of the Snake River Basin, are used to pay expenses related to the Northern Idaho Adjudication.

Federal Fund (0348) – Funds received from grants and agreements with federal agencies including the Federal Emergency Management Agency (FEMA), National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service, Natural Resource Conservation Service (NRCS), United States Army Corps of Engineers (USACE), and other federal programs are used to administer various water and research projects.

Miscellaneous Revenue Fund (0349) – Fees collected from Water District 01, Priest Lake Dam users, and other entities for various projects and services are used to pay for Water District 01 personnel costs and various water and resource studies.

Revolving Development Fund (0490-01) – This fund is used to make loans for projects approved by the Board. This fund receives appropriations from the General Fund, revenues from water bank activities (renting water), and interest revenues earned from loans. Money deposited into this fund is continuously appropriated.

Water Management Fund (0490-02) – This fund is used to makes loans or grants for new water projects or the rehabilitation of existing projects limited to reclamation, upstream and offstream storage, aquifer recharge, reservoir site acquisition and protection, water supply and quality, recreation, and water resource studies, including feasibility studies. This fund receives State appropriations, revenues from water bank activities (renting water), and interest revenues earned from loans. Money deposited into this fund is continuously appropriated.

Custodial Fund (0630) – This fund receives money from the claims against the Carey Act for building irrigation in areas of Southern and Eastern Idaho. Moneys also come from stream gaging costs paid by private landowners and is paid out through the fund to Idaho power and USGS who conduct the monitoring and share the data. It is continuously appropriated.

ORGANIZATIONAL CHART

Idaho Department of Water Resources
February 15, 2023

